Community land can be converted to either public land or private land and vice versa. The Act provides that at least two-thirds of the community members must approve any conversion of community land. This does not however limit the application of the Land Act, 2012 and any other law in respect of compulsory acquisition of land.

A community may, with the approval of its members, allocate land to a member or a group of members for **exclusive use and occupation** for such a time as the community will determine. However, an individual entitlement is not to be superior to the community title and a separate title is not to be issued. Further, a pastoral community may grant grazing rights to a non-member of a community.

An agreement relating to investment in community land should be free, open and a result of a consultative process whichshould involve among other things stakeholder consultations and involvement of the community. The agreement should provide for the payment of compensation and royalties, capacity building of the community and transfer technology to the community.

A registered community may use alternative dispute resolution mechanisms including traditional dispute resolution mechanisms to settle disputes. However, where all efforts of resolving a dispute fail, a party may institute judicial proceedings.

The **group representatives** who held land under the Land (Group Representatives) Act together with the communities they represent are to be registered as a community under the Act. Land held under by group representatives in this respect may not be sold, leased or converted unless it has been registered under the Community Land Act.

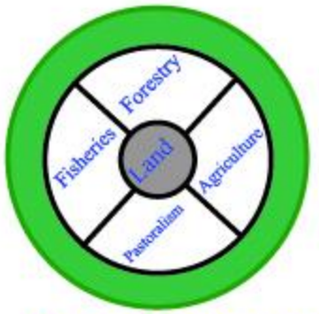
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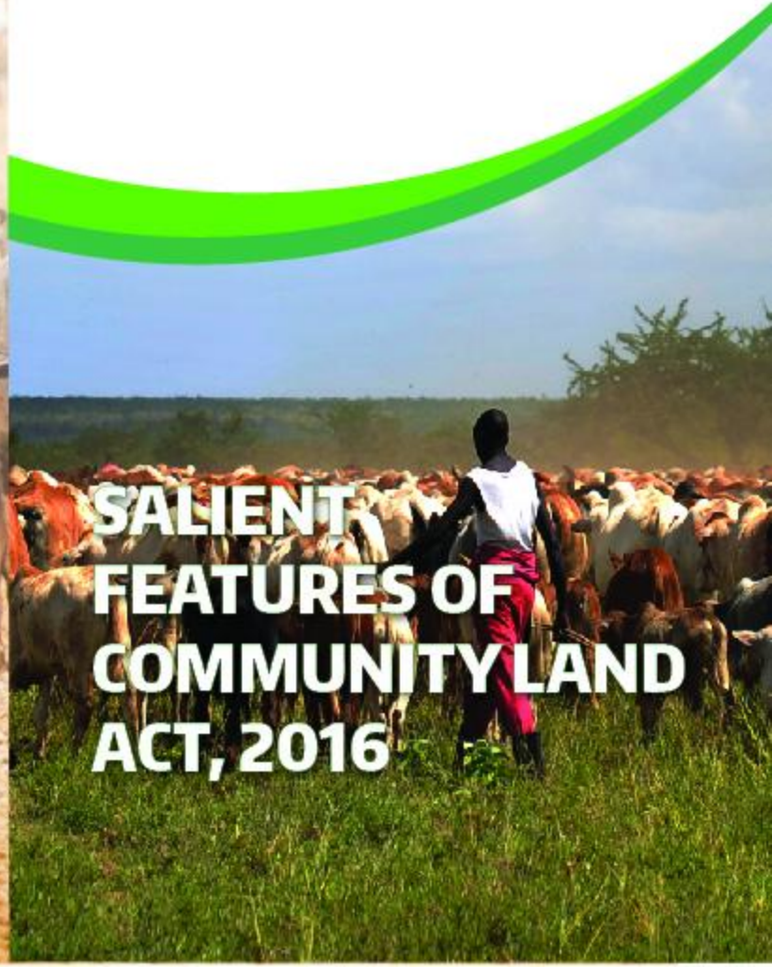
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Legal/Policy Research and Advocacy Department



RECONCILE



SALIENT FEATURES OF COMMUNITY LAND ACT, 2016

The Community Land Act, No. 27 of 2016 came into force on 21st September 2016.

Aims at giving effect to Article 63 of the Constitution of Kenya, 2010 which provides for a classification of land known as community land. Providing for, the recognition, protection and registration of community land rights. The management and administration of community land. The role of county governments in relation to unregistered community land and related matters. The Act repeals the Land (Group Representatives) Act (Chapter 287 of the Laws of Kenya) and the Trust Lands Act (Chapter 288 of the Laws of Kenya).

On ownership the Community land in Kenya is to vest in the Community. In this respect, the term "**Community**" has been defined to mean a consciously distinct and organized group of users of community land who are citizens of Kenya and share any of the following attributes: common ancestry, similar culture or unique mode of livelihood; socioeconomic or other similar common interest; geographical space; ecological space; or ethnicity. The constitution of a community is therefore not limited to ethnic lines.

The Act requires a community claiming an interest in or right over community land to be registered.

The tenure systems and classes of holding community land in the following systems: customary, freehold, leasehold, and such other tenure system recognized under the Act or other written law. Further, community land may be held as communal land, family or clan land, reserve land, or in any other category of land recognised under the Act or any other written law.

The registration of community land rights is to be in accordance with its provisions and the provisions of the Land Registration Act, 2012. In this respect, **a Certificate of Title issued by the Community Land Registrar is to be evidence of ownership of the land.** This Certificate of Title is not to be subject to challenge, except on grounds of fraud or misrepresentation to which the person is proved to be a party or where the certificate of title has been acquired illegally, unprocedurally or through a corrupt scheme.

The registration of a community as the proprietor of land is to vest in that community the **absolute ownership** of that land, while, the registration of a community as the proprietor of a lease vest in that community the **leasehold interest** described in the lease, together with and subject to all implied and express rights and privileges.

The Chief Land Registrar is required to designate a qualified registrar to be the Community Land Registrar responsible for registration of community land. The Act also requires the maintenance for each registration unit, a community land register in accordance with section 8 of the Land Registration Act, 2012.

The Act recognises customary land rights including the customary right of occupancy and provides for their adjudication and documentation. The Act also gives customary land rights equal footing in law as freehold and leasehold tenure. In this regard, the term "customary land rights" is defined to mean rights conferred by or derived from African customary law, customs or practices provided that such rights are not inconsistent with the Constitution or any written law.

Subject to the transition and saving provisions under the Act, any person who immediately before 21 September 2016 had a subsisting customary right to hold or occupy land is to upon commencement of this Act continue to hold such right.

The main role of the **County Government** under the Act is to hold in trust on behalf of a community unregistered community land and any monies payable as compensation for compulsory acquisition of any such unregistered community land. Any such monies are to be deposited in a special interest earning account by the County Government and will be released to the community upon registration of the community land.

A County Government is prohibited from selling, disposing, transferring, and converting for private purposes or in any other way disposing of any unregistered community land that it is holding in trust on behalf of a community.

The Act establishes a **Community Land Management Committee** which will be elected by a community assembly consisting of all adult members of the community. The functions of the Community Land Management Committee will be to: have responsibility over the running of the day to day functions of the community, manage and administer registered community land on behalf of the respective community, coordinate the development of community land use plans in collaboration with the relevant authorities, promote the co-operation and participation among community members in dealing with matters pertaining to the respective registered community land, and prescribe rules and regulations, to be ratified by the community assembly, to govern the operations of the community.

The Act limits the compulsory acquisition by the State of any interest in, or right over community land only in the instance where the compulsory acquisition is, first, in accordance with the law. Second, for a public purpose. Third, upon prompt payment of just compensation to the person or persons, in full or by negotiated settlement.